

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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|----------------------------|---|----------------------------------|
| Matthew Stedman, |) | CASE NO. 1:05 CV 2051 |
| |) | |
| Petitioner, |) | JUDGE PATRICIA A. GAUGHAN |
| |) | |
| vs. |) | |
| |) | |
| Pat Hurley, Warden, |) | <u>Order</u> |
| |) | |
| Respondent. |) | |

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Hemann (Doc. 24) which recommends denial of petitioner's Motion for Permanent Stay of Proceedings. For the following reasons, the Report and Recommendation is ACCEPTED and this matter is hereby re-referred to Magistrate Judge Hemann.

Petitioner, Matthew Stedman, commenced this action with the filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Petitioner is incarcerated after a Cuyahoga County Court of Common Pleas jury convicted him of aggravated murder with a firearm specification.

Petitioner has sought to stay indefinitely these proceedings pending a decision by the

state trial court on petitioner's motion asserting that newly discovered evidence substantiates a claim that petitioner was out of the country at the time of the murder for which he was convicted and, therefore, he is actually innocent of the crime.

The Magistrate Judge rejected petitioner's request for a stay and his alternative request for dismissal without prejudice while tolling the statute of limitations. Petitioner has filed Objections but does not appear to raise specific objection to the findings therein. Rather, petitioner asks that he be permitted to file his Traverse within 60 days of this Court's decision.

The Court agrees with the Magistrate Judge's findings. The Magistrate Judge determined that a stay is not warranted because the Petition for Writ of Habeas Corpus contains six grounds for relief, all of which have been exhausted in the state courts. Petitioner's unexhausted claim of actual innocence pending in state court is not included in his Petition and, therefore, the Petition is not a "mixed petition" which permits a court to stay exhausted claims while unexhausted claims are resolved. Nor is an amendment to the Petition allowed where the amendment does not relate back to the date when the original Petition was filed. Alternatively, petitioner's request to dismiss without prejudice without tolling the statute of limitations is not warranted because the statute of limitations herein has expired and cannot be tolled.

The Court, however, will permit petitioner to file his Traverse within 60 days of this Order.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 10/4/06